



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,008	03/05/2002	Alexander Kamyshny	1268-154	4395
2292	7590	07/29/2004	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			ALEXANDER, LYLE	
			ART UNIT	PAPER NUMBER
			1743	

DATE MAILED: 07/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/090,008

Applicant(s)

KAMYSHNY ET AL.

Examiner

Lyle A Alexander

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8, 12 and 46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims need to change “stabilizer” to —antioxidant—to conform to the 5/26/04 amendments. As presently written, these claims are not further limiting because the parent claim does not recite the claimed “stabilizer”.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5, 7, 9-13, 16-24, 26, 28-36, 39-43, 45 and 47-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michael in view of Van Lente et al.

Michael teaches diagnostics beads for indication of occult blood in animal litter. Column 2 lines 1+ teach the beads can be made of cellulose. Column 2 lines 46-60 teach the beads may have a diameter between 1 to 40 mm and may comprise from 1-100% of the litter. Column 4 lines 40+ teach TMB as the indicator, polyvinyl pyrrolidone (PVP) as the binder and cumene hydroperoxide.

Michael is silent to the claimed antioxidant such as BHT.

Van Lente et al. teach in columns 3-4 lines 65-6 “...the color change of occult blood indicators such as tetramethylbenzidine (3,3',5,5', tetramethylbenzidine) fade

over time, it is desirable that the system have preservatives such as BHT to preclude unwanted color change before exposure to blood/urine mixtures. This will allow the color to last at least for an 8-hour period. This gives the pet owner sufficient time to notice the color change in the kitty litter box. Butylated hydroxytoluene (BHT) can be a suitable preservative.

It would have been within the skill of the art to modify Michael in view of Van Lente et al. and use BHT in the composition to gain the above advantages.

Michael is silent to calcium carbonate and alumina as inorganic filler, application of the composition as a spray or as a dry powder.

The court decided In re Boesch (205 USPQ 215) that optimization of a result effective variable is ordinarily within the skill of the art. A result effective variable is one that has predictable and well-known results.

The choice of well known inert materials, such as calcium carbonate or alumina, are result effective variables with the known and expected result of creating a non-reactive substrate upon which the reagent is placed. Additionally, calcium carbonate and alumina are readily available and inexpensive. It would have been within the skill of the art to modify Michael to use calcium carbonate or alumina as a filler material as optimization of a result effective variable and to gain the above advantages.

The method of application of an indicator to a substrate is a result effective variable having the expected result of placement of the indicator in the desired location. Spraying the indicator has the advantages of very precise placement capable of using

very small volumes of indicator that is cost saving. Application of dry indicator is advantageous because it does not require sophisticated equipment and can be done by the layperson on site. It would have been within the skill of the art to modify Michael and apply the reagent by either spraying or as a dry powder as optimization of a result effective variable and to gain the above advantages.

Claims 6,14-15, 25, 37-38, 44 and 49-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michael in view of Van Lente et al.

and further in view of Puglia (USP 5,318,894).

See Michael in view of Van Lente et al. supra.

Michael is silent to use of 6-methoxyquinoline and metal sequestering agents.

Puglia teaches a composition and device for the detection of occult blood using a TMB indicator system. Puglia teaches in column 23 lines 48+ use of 6-methoxyquinoline as a promoter to achieve a more sensitive assay. Further, in column 8 and 12 lines 9-26 and 1-20 respectively teach it is advantageous to use chelated ferric ion complexes to eliminate interfering compounds having peroxidatively activity that could give false positive results. The claimed additive and metal sequestrant have been read on the chelated ferric ion complex.

It would have been within the skill of the art to modify Michael in view Van Lente et al. further in view of Puglia and use 6-methoxyquinoline and a chelated ferric ion complexes to gain the above advantages.

Allowable Subject Matter

Claims 8,27 and 46 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lyle A Alexander
Primary Examiner
Art Unit 1743
